

Message Text

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PAGE 01 MANILA 13701 101128Z

15

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 9664

C O N F I D E N T I A L MANILA 13701

E.O. 11652: GDS

TAGS: EGEN, RP

SUBJECT: AER DRAFT TREATY AND AMCHAM OF PHIL CONCERNS PAPER

BEGIN SUMMARY: AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES HAS ADVISED EMBASSY IT WILL DISTRIBUTE THIS WEEK PAPER OUTLINING MEMBERS' MAJOR CONCERNS ABOUT PROSPECTIVE US-PHILIPPINE ECONOMIC RELATIONSHIP. PAPER LISTS SIX MAJOR CONCERNS: RETAIL TRADE, PARITY LANDS, PUBLIC LAND LEASES, MANAGEMENT RIGHTS OF MINORITY OWNERS IN FILIPINIZED ENTERPRISES INCLUDING PROPORTIONATE REPRESENTATION ON BOARD, VISA PROBLEMS AND PROTECTION AGAINST NEW LIMITATIONS ON EXISTING ENTERPRISES. RECENT DISCUSSIONS OF THESE CONCERNS BETWEEN EMBASSY OFFICIALS HAVE POINTED TO LIMITED ABILITY OF AN AER TREATY TO PROVIDE SOLUTIONS TO THESE CONCERNS AND THE RISKS TO NEGOTIATING FLEXIBILITY INHERENT IN WIDE CIRCULATION OF STATEMENTS OF MAXIMUM OBJECTIVES. COPIES OF AMCHAM PAPER BEING FORWARDED BY AIRGRAM. EMBASSY WOULD APPRECIATE DEPT COMMENTS INCLUDING THOUGHTS ON POSSIBLE EFFECTS OF DRAFT AER ON CERTAIN OF CHAMBER POSITIONS. END SUMMARY.

1. AS PREVIOUSLY REPORTED, EMBASSY HAS HAD CONTINUING DISCUSSIONS ON ECONOMIC ISSUES WITH
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PAGE 02 MANILA 13701 101128Z

LEADERSHIP OF AMCHAMBER OF THE PHILIPPINES. CHAMBER

LEADERSHIP EARLIER PRESENTED TO AMBASSADOR PAPER DESCRIBING SIX CONCERNS IMPORTANT TO CONTINUING U.S. ECONOMIC ACTIVITY AND INVESTMENT IN PHILIPPINES AFTER EXPIRATION OF LAUREL-LANGLEY AGREEMENT. CHAMBER HAS NOW INDICATED IT WILL CIRCULATE REVISED PORTION OF PAPER TO MEMBERSHIP, PARENT FIRMS AND SOME INTERESTED MEMBERS OF CONGRESS THIS WEEK.

2. THE SIX TOPICS DISCUSSED IN AMCHAM PAPER ARE (1) THE NEED FOR A REDEFINITION OF WHAT CONSTITUTES RETAIL TRADE IN ORDER TO EXCLUDE FROM 100 PERCENT FILIPINIZATION REQUIREMENT SUCH ITEMS AS BULK, INDENT AND CERTAIN OTHER INDUSTRIAL SALES, (2) IN PARTIALLY FILIPINIZED ACTIVITIES OR SECTORS, THE DESIRE FOR SOME TYPE OF ASSURANCE THAT MINORITY U.S. INVESTORS COULD ELECT PROPORTIONATE REPRESENTATIVES TO THE GOVERNING BODIES, WHILE SUCH FILIPINIZED CORPORATION COULD MAKE MANAGEMENT APPOINTMENTS WITHOUT RESTRICTIONS AS TO NATIONALITY AND ENTER INTO SERVICE CONTRACTS WITH FOREIGNERS. (3) TO OBTAIN VESTED RIGHTS TO ALL TYPES OF LAND ACQUIRED PRIOR TO JULY 1974, (4) TO INSURE CONTINUING VALIDITY OF LEASES OF PUBLIC LANDS INCLUDING FORESHORE LEASES WHICH HAVE TERMS EXTENDING BEYOND JULY 1974, INCLUDING RENEWAL RIGHTS, (5) TO REAFFIRM TREATY TRADER STATUS FOR VISA PURPOSES AND SIMPLIFY PROCEDURE FOR RENEWING AND OBTAINING OTHER TYPES OF BUSINESS RELATED TO VISAS, (6) TO PROTECT PRESENT BUSINESS ENTITIES AGAINST NEW LIMITATIONS THAT MAY BE IMPOSED BY PHIL GOVT.

3. CHAMBER LEADERS HAVE INDICATED THEY FEEL CONSIDERABLE PRESSURE TO RESPOND IN SOME CONCRETE FASHION TO MEMBERSHIP DESIRE FOR INFORMATION ON CHAMBER'S EFFORTS TO PREVENT HARM TO MEMBERS' INTERESTS FROM EXPIRATION OF LAUREL-LANGLEY AGREEMENT. LEADERS HAVE EXPRESSED AWARENESS OF THE PROBLEMS INVOLVED IN MAINTAINING NEGOTIATING FLEXIBILITY WHILE MAKING SPECIFIC STATEMENTS ABOUT MEMBER CONCERNS. HOWEVER, THEY APPEAR CONVINCED THAT DELAY IN CIRCULATING PAPER WOULD ENCOURAGE GROWING APPREHENSION AMONG CHAMBER MEMBERS THAT PRESENT UNCERTAINTIES ABOUT FUTURE RELATIONSHIP

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 MANILA 13701 101128Z

WILL NOT BE
SATISFACTORILY RESOLVED IN ACCEPTABLE TIME FRAME.

4. EMBOFFS CONVEYED TO AMCHAM LEADERSHIP THAT PRACTICALLY ALL THESE POINTS WOULD UNDOUBTEDLY BE PART OF NEGOTIATING PROCESS, BUT UNTIL WE ARE INFORMED OF THE PHIL POSITION IT IS DIFFICULT TO DISCUSS SPECIFICS IN ANY MEANINGFUL WAY. EMBOFFS IMPLIED THAT EFFORT TO

SEEK MINORITY MANAGEMENT RIGHTS IN RESPECT TO
PHILIPPINE CONTROLLED FIRMS WAS UNUSUAL AND PROVCBLY
NOT FEASIBLE. PHIL LAW ALSO DOES NO PREVENT PROPORTIONATE
REPRESENTATION ON BOARDS OF DIRECTORS, AND NEW
CONSTITUTION AFFIRMS RIGHT FOR PUBLIC UTILITIES.
SOLUTIONS TO THREAT TO MINORITY RIGHTS CONTAINED IN ANTI-
DUMMY LAW WOULD PROBABLY HAVE TO BE FOUND OUTSIDE TREATY.
AMCHAM WAS ALSO ASKED TO FORMULATE DEFINITION OF RETAIL
TRADE THAT WOULD COVER THEIR ESSENTIAL INTERESTS AND TO
REPORT AMERICAN FIRMS CONSIDERED TO BE ENGAGED IN RETAIL TRADE UNDER
ANY LIKELY DEFINITION.

5. IN ANY FURTHER DISCUSSIONS OF CERTAIN ISSUES WITH
THE AMCHAM LEADERS IT WOULD BE HELPFUL FOR DEPT
TO PROVIDE EMBASSY WITH COMMENTS ON THE FOLLOWING
ARTICLES IN DRAFT AER. DOES THE WORD "CONTROLLED"
AS USED IN ARTICLE V (4), DRAFT AER MEAN U.S. INTERESTS
MUST OWN OVER 50 PERCENT OF EQUITY OR DOES CONTROL HAVE
MORE INCLUSIVE MEANING AND WHAT IMPLICATIONS DOES THIS
HAVE FOR MEANING OF "THEIR ENTERPRISES" IN ARTICLE V (5)?
IN ARTICLE V (2), EMBASSY ASSUMES NEW LIMITATION CONCEPT
MEANS NEW LIMITATIONS IMPOSED AFTER EFFECTIVE DATE OF
TREATY. HOWEVER, IT APPEARS THAT THERE ARE LIMITATIONS
ALREADY PROMULGATED IN PHIL LAW BUT NOT APPLIED AT
PRESENT TO CERTAIN TYPES OF U.S. INTERESTS. IF NOT
APPLIED AT TIME OF TREATY, WOULD GOP THEN BE BARRED
FROM APPLYING PRE-EXISTING LIMITATIONS*TO U.S.
INTERESTS? EM ASSY ASSUMES ARTICLE V (1) REQUIRES
NATIONAL TREATMENT REGARDING LIMITATIONS, NEW OR OTHERWISE,
ON ACTIVITIES NOT DESCRIBED IN PARA V (2). IN ARTICLE
13 (B), EMBASSY ASSUMES THAT THIS COVERS
THIRD COUNTRY NATIONALS. IF NOT, PLEASE ADVISE.

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PAGE 04 MANILA 13701 101128Z

6. DEPARTMENT COMMENTS ON CHAMBER PAPERS AND
RAMIFICATIONS THEREOF FOR PROPOSED NEGOTIATIONS AND
AER DRAFT WOULD BE APPRECIATEED.
SULLIVAN

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